

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Vaughn Cook, Individually and on)	C.A. No. <u>2:23-cv-00102</u>
Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	
)	<u>Defendant ACS's Notice of Removal</u>
v.)	
)	
ChartSwap, LLC; Charleston Radiologists,)	
P.A., and ACS Primary Care Physicians)	
Southeast, P.C.,)	
)	
Defendants.)	

Pursuant to 28 U.S.C. §§ 1332(d)(2) and 1446, Defendant ACS Primary Care Physicians Southeast, P.C. (“ACS”) gives notice of the removal of this action to the United States District Court for the District of South Carolina. In support of that removal, ACS would show the following.

1. This action was filed on or about November 15, 2022, in the Court of Common Pleas for Charleston County, South Carolina. The Summons and Complaint, attached as **Exhibit A**, was served on Defendant ACS on December 16, 2022. Thus, this Notice of Removal is filed within thirty (30) days of service as required by 28 U.S.C. § 1446(b).

2. The Complaint seeks to certify a class under Rule 23 of the South Carolina Rules of Civil Procedure, consisting of all citizens of the State of South Carolina whose counsel have requested medical records from any of the defendants since November 15, 2019. *Complaint*, at ¶¶ 47-54. Thus, this is a “class action” as defined in 28 U.S.C. § 1332(d)(1)(B).

3. The amount in controversy exceeds \$5 million, exclusive of interest and costs. The Complaint seeks compensatory damages, punitive damages, and injunctive relief on behalf of the

putative statewide class. Based upon information available to ACS from its own records, and that of Defendant ChartSwap, LLC, the total number of class members is more than 100 and the amount in controversy on behalf of the putative statewide class exceeds the \$5 million threshold of 18 U.S.C. § 1332(d)(2).

4. With regard to the number of class members, ACS records show that the putative class, which includes all South Carolina citizens whose counsel have requested medical records from any of the Defendants since November 15, 2019, easily exceeds 100 in number. The records of ACS show that it or ChartSwap have responded to 29,715 requests for records for ACS' services in South Carolina for the years 2020-22. This figure does not include other expired, cancelled, rejected, or pending requests.

5. Although the Complaint does not specify an amount in controversy, the object of the litigation, which revolves around Plaintiff's allegation that Defendants charged improper (too high of) fees for the search and production of medical records, exceeds \$5 million. *See Mattison v. Wal-Mart Stores, Inc.*, No. 6:10-CV-01739-JMC, 2011 WL 494395, at *2 (D.S.C. Feb. 4, 2011) (When a specific amount is not specified in the complaint, "the object which is sought to be accomplished by the plaintiff may be looked to in determining the value of the matter in controversy"). For example, ACS' records show custodian or ChartSwap fees associated with requests for ACS patient records in the amount of \$924,985.07. ACS understands that codefendant ChartSwap's records will show challenged fees and charges in the principal amount of approximately \$4.7 million.

6. Additionally, as noted above, the amount in controversy analysis also includes Plaintiff's request for other forms of damages, such as punitive damages. *See, e.g., id.*, at *2

(Noting that claims for punitive damages must be included in the calculation of the amount in controversy).

7. Furthermore, there is minimal diversity between the putative class plaintiffs and Defendants in this case. The Complaint establishes that named Plaintiff Vaughn Cook is “a South Carolina citizen who resides in Charleston County, South Carolina.” *Complaint*, at ¶ 8. The Complaint likewise establishes that Defendant ACS is a Georgia corporation. *Id.*, at ¶ 11. ACS’s principal place of business is Knoxville, Tennessee. *See Exhibit B* (business search information from Georgia Secretary of State web site). Under 28 U.S.C. § 1332(c)(1), ACS is a citizen of its state of incorporation (Georgia) and of its principal place of business (Tennessee). Thus, at least one defendant is a citizen of a state different from that of at least one plaintiff. 28 U.S.C. § 1332(d)(2)(A).

8. Thus, this is a class action, with more than \$5 million in controversy, and with minimal diversity between the parties. Federal jurisdiction is present under 28 U.S.C. § 1332(d). Removal is timely and appropriate under 28 U.S.C. §§ 1332(d) and 1446.

9. The exceptions of 28 U.S.C. §§ 1332(d)(3) and (4)(B) do not apply because Defendant ACS is a primary defendant and is not a citizen of the state of South Carolina but rather of Georgia and Tennessee. *Complaint*, at ¶ 17 (“Plaintiff seeks significant relief from each Defendant and each of the Defendant’s [sic] conduct forms a significant basis of the asserted claims.”).

10. The “local controversy” exception of 28 U.S.C. § 1332(d)(4)(A) does not apply because, during the three-year period preceding the filing of this class action, another class action was filed asserting the same or similar factual allegations against a defendant on behalf of the same or other persons; namely: *Nathan Cobb, individually and on behalf of all others similarly situated*

v. ChartSwap, LLC; Charleston Radiologists, P.A.; and ACS Primary Care Physicians Southeast, P.C., No. 2022CP2000337 (Fairfield Co. Court of Common Pleas) (filed November 15, 2022, at 1:50pm); *Ophelia Johnson, individually and on behalf of all others similarly situated v. ChartSwap, LLC; Carolina Radiology Associates; and ACS Primary Care Physicians Southeast, P.C.*, No. 2022CP1400504 (Charleston Co. Court of Common Pleas) (filed November 15, 2022, at 1:32pm; and *Karleisha Gamble, individually and on behalf of all others similarly situated v. ChartSwap, LLC; Carolina Radiology Associates, LLC, d/b/a Carolina Radiology Associates; and ACS Primary Care Physicians and Southeast, P.C.*, No. 2022CP2607249 (Horry Co. Court of Common Pleas) (filed November 15, 2022, at 1:42pm). Copies of the complaints in those actions are attached as **Exhibit C** to this notice.

As required by 28 U.S.C. § 1446(d), complete copies of all pleadings filed in state court will be filed along with this Notice of Removal, a copy of which will also be filed in the Court of Common Pleas for Anderson County. Plaintiff has or will be served with a copy of this notice under 28 U.S.C. § 1446(d).

(Signature block on next page)

This 9th day of January 2023
Charleston, South Carolina

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC**

s/Catherine Wrenn

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